IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.1758 OF 2004

IN

SUIT NO.1706 OF 2004

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Mrs.Cecilia wd/o Zuran
Misquitta & ors. ...Plaintiffs

v/s.

M/s.Dattani Constructions
and another ...Defendants

...

Mr.S.K. Jain for the Plaintiffs.

Mr.Sanjay Jain i/b A.V. Jain & Associates for
Defendants Nos. 1 & 2.

...

CORAM: D.K.DESHMUKH, J.

DATED: 29TH APRIL,2005

P.C.:

1. This notice of motion is taken out by the Plaintiffs for certain interim reliefs restraining the Defendants from carrying out the work on the plot. Admittedly, the Plaintiffs have shares in the joint property. In 1980, the agreement for development was entered into. According to the Plaintiffs, that agreement was terminated by letter dated 29-10-2003 and therefore the Defendant No.1 has no authority to continue the construction.

2. I have heard the learned Counsel for the Plaintiffs. I have gone through the record. I find that the Plaintiffs have come to the court with contradictory statements about relevant aspect of the matter. The case of the Plaintiffs is that possession of the land was never handed over to the Defendants. The learned Counsel appearing for the

Plaintiffs stated before me that for the first time the Defendant No.1 entered on the suit property and started demolishing the structure on 25-1-2003. But in the notice dated 29-10-2003 issued by the lawyer of the Plaintiffs, it is stated that the Defendant No.1 has entered upon the land on 8-3-2003. Then, there is a notice dated 10-12-2003 given again by the lawyer of the Plaintiffs. In that notice it is stated that the Plaintiffs discovered that the Defendant No.1 has entered the land in December, 2003. However, admittedly, according to the Defendants, work of demolition and construction is going on from last week of December, 2003. This suit has been filed on 25-5-2004. I do not find any explanation given, why the Plaintiffs did not approach the court immediately. The Defendants have produced a copy of an affidavit filed by one of the co.owner of the property in a suit filed in the city civil court by the Defendant No.1 in relation to the suit property. In that affidavit, a co.owner of the property of the Plaintiffs has stated that possession of the property was handed over to the Defendant No.1 in April, 1985 in part performance of the contract. It is thus clear that the Plaintiffs themselves are not clear about their case. The learned Counsel

appearing for the Defendant No.1 states that the construction has made substantial progress.

3. Taking overall view of the matter, therefore, particularly considering the contradictory stands taken by the Plaintiffs and the latches involved, in my opinion, it will not be appropriate to make interim order in favour of the Plaintiffs, which is sought by this Notice of Motion. The Defendant No.1 has already made a statement before this court that the Defendant No.1 will not claim any right on the basis of the construction that is put on by the Defendant No.1 at the final disposal of the suit.

4. In addition, it is directed that that statement will bind the Defendant No.1 till the final disposal of the suit and the Defendant No.1 is also directed to inform every person in whose favour he creates third party rights that the third party rights created in favour of those parties are subject to the result of this suit. The third party shall be informed by the Defendant No.1 in writing. After the Defendant No.1 disposes of the property, the Defendant No.1 shall file an affidavit in this court

disclosing the complete information about the disposal of the property disclosing the names of the persons in whose favour third party rights have been created. The learned Counsel appearing for the Defendant No.1 also states that the Defendant No.1 will also continue to abide by his statement that the Defendant No.1 shall not put up any construction on a portion of 500 sq.ft. of the suit property or consume FSI or TDR qua the same.

Notice of Motion disposed of.

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